



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

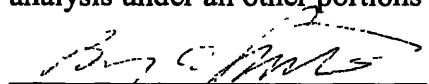
**SENSITIVE**

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 ) MUR 5491  
Jerry Falwell Ministries, Inc. )  
The Liberty Alliance, Inc. )

**STATEMENT OF REASONS OF COMMISSIONER BRADLEY A. SMITH**

It is worth a note to address the Statement of Reasons of Chairman Thomas and Commissioner McDonald, who argue that if the activity at issue in this MUR had been "coordinated" with the campaign, it would be exempt from regulation because it did not meet the definition of a "coordinated communication" set forth in 11 C.F.R. Section 109.21, specifically because it failed the content standard of 109.21(c). Thus, they suggest that the case should not go forward because, "it hardly seems justifiable to pursue this respondent for doing independently what they are free to do in coordination with a campaign or committee." Statement of Reasons of Chairman Thomas and Commissioner McDonald at 2. But activity is not, as a legal matter, both "coordinated" and "uncoordinated" at the same time. As with so many terms in the FECA, we do not use "coordinated" in the ordinary sense that average citizens can readily understand. (This opacity of language is a problem with campaign finance laws, to be sure, but beyond our dealing with here). Rather, to say that something is "coordinated" under FECA is to give it a legal definition. It is nonsensical to say then, that activity that fails to meet the definition of a "coordinated communication" must be analyzed as a "coordinated communication," and therefore exempt from all regulation because it is not a "coordinated communication" -- which is what I understand the Chairman and Commissioner McDonald to be saying. Rather, if something is not a "coordinated communication," by definition it may be analyzed under the standards for independent communications. Of course, if activity is not illegal under the standard of an independent communication either, then there is no liability. Not all political messages are regulated, despite the best efforts of some to assure otherwise. Generally, only independent communications containing "express advocacy," and those defined as "electioneering communications" at 2. U.S.C. 434(f)(3), are regulated by FECA. But the fact that something is not a "coordinated communication" does not somehow exempt it from analysis under all other portions of the Act.

  
Bradley A. Smith  
Commissioner

  
Date Aug 2, 2005